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Docket Management Facility

Docket Numbers: [USCG-2003-14792] National Maritime Security Initiatives
[USCG-2003-14733] Area Maritime Security
[USCG-2003-14749] Vessel Security
[USCG-2003-14732] Facility Security

US Department of Transportation

Room PL-401

400 Seventh Street, SW

Washington, DC 20590-0001

Dear Sir,

RE: Implementation of National Maritime Security Initiatives [USCG-2003-14792], Area Maritime Security [USCG-2003-14733], Vessel Security [USCG-2003-14749], Facility Security [USCG-2003-14732], Temporary Interim Rules with Request for Comments and Notice of Meeting (Federal Register, Tuesday, July 1, 2003, pgs. 39240-39338)

1. The International Chamber of Shipping (ICS), representing more than half of the world's merchant shipping tonnage, is most grateful for the opportunity to comment on the proposed temporary interim rules on maritime security. The following comments reflect the view of shipowners from an international perspective.

2. ICS, which has observer status at the International Maritime Organization (IMO), has been closely engaged in the development of the ISPS Code. We attended all of the meetings of the Intersessional Working Group on maritime security and the Diplomatic Conference in December 2002, when the SOLAS amendments were adopted. The initiative of the US Coast Guard in taking the problem of maritime security to the international forum of the IMO is fully supported. The greatest success of this move has been the development of a common standard in maritime security measures to be applied on a world-wide

basis from 1 July 2004. This is an essential element in the maintenance of global trade against a background of heightened security awareness.

General Comments

3. It follows from the above comments, that ICS welcomes the close resemblance of the temporary rules to the international provisions in SOLAS and in the ISPS Code. We regard the continuing alignment of such regulations as a pre-requisite for shipping to be able to provide an increased level of security while maintaining the operating efficiency which global trade demands.

4. ICS gives its strongest support to the USCG position that the US should recognise valid International Ship Security Certificates (ISSC) as evidence of compliance with, and satisfactory implementation of, the relevant provisions of SOLAS and the ISPS Code, unless there are clear grounds to suppose otherwise. In taking this view the USCG is recognising the validity of the international agreement reached at the December Diplomatic Conference and fully supporting its provisions. This recognition of flag state responsibility by parties to SOLAS will also release the USCG from a daunting and distracting paperwork exercise and permit valuable resources to be more productively deployed on the real security task.

5. ICS recognises that consistency and compatibility amongst security plans is a fundamental requirement in the successful implementation of ISPS. The USCG is urged to continue in its effort to ensure that national provisions are seamlessly meshed with the measures implemented by internationally trading ships in accordance with SOLAS and ISPS.

6. Similarly, it is paramount that consistency and compatibility should be evident in the interaction of security plans for ships, facilities, ports and areas. The USCG is urged to ensure that, in approving plans, adequate provision is made for this co-ordinated approach.

7. The matter of liability is currently outside of the temporary rule and of SOLAS/ISPS, nevertheless it is a matter of concern to ICS. It requires careful forethought before the event rather than hasty resolution afterwards. Our primary concern is the case where, despite a ship having fully complied with international and US domestic legislation and the security level in force, it nevertheless becomes a target for a terrorist attack or unwittingly its instrument. The very nature of a terrorist attack is to exploit previously undetected weakness and no matter how meticulous the security assessment and the implementation of the security plan, the protection is unlikely to be 100%. In such a case we do not think that the ship should be potentially liable for the consequences of an unforeseeable event of this nature.

8. In addition to this matter, we believe there is a need to address the problem of liability in the event that controls are 'unduly' imposed. Such a case would be where a ship has been detained and costs are incurred but it is

subsequently found that the detention had no justification. We therefore request that matters relating to liability be clarified in the publication of the final rule.

Preamble, Co-ordination with the SOLAS Requirements (pgs 39242-39243)

9. The Diplomatic Conference on maritime security recognised the difference in intention of Part A and Part B of the ISPS Code and agreed that Part A would be mandatory and Part B recommendatory. It was, however, also recognised that consideration of the recommendations in Part B was a necessary step in complying with Part A. The USCG is exceeding the requirement of the international convention in asking for evidence that the issuance of an ISSC was determined on compliance not only with Part A but also Part B. It is our contention that such is the relationship between the two parts of the Code that documentary evidence is unnecessary. The fact that the certificate is issued should suffice, since certification implies that Part B has been taken into account. The proposal to include a statement in the ISSC regarding compliance with Part B was rejected at the recent meeting of the IMO Maritime Safety Committee and we urge the USCG to reconsider this requirement. However if this requirement were ultimately embodied in the final rule then there would appear to be a need to quote acceptable text to pre-empt possible port state control uncertainty in US ports. (It is worth noting that paragraph 104.120 (4) gives an interpretation, with respect to Part B, for foreign ships that ICS finds entirely appropriate.)

10. The right of the USCG to track the performance of recognised security organisations (RSO) is supported. However, we believe that any question of under-performance on the part of an RSO should be taken up with the flag State that has made the designation and should not, in the first instance, be sufficient justification for the application of control measures on a ship which has been certified by the RSO in question.

Applicability Evaluation for Vessels (pg 39246)

11. ICS is surprised and concerned that the entire list of ships on page 39246 should be designated at 'high risk' of a transportation security incident. No account appears to have been taken of the very different types of ship and vessel listed, the prevailing circumstances or the need to consider specific threats and warnings.

Table 3. Comparison of Estimated Fatalities (pg 39248)

12. We have some concern at the predicted fatality figures in Table 3 for a maritime security incident. Whilst the need to conduct modelling exercises is understood, there is also a need to urge caution in the interpretation of the figures. We would hope that the figures are not used to draw firm conclusions.

Assessment Limitations (pg 39250)

13. This section places an obligation on ships to 'address recreational vessels approaching them that they reasonably suspect may pose a threat to them'. ICS believes that this requirement makes a demand beyond the capability of any merchant ship. The ship is not equipped to identify such a threat or to react in self defence should the threat be identified. This is a measure that even a warship would find difficult to implement.

Preamble, Discussion of Comments to Maritime Security Public Meetings (pg 39252)

14. ICS (and other international representative bodies) has considerable concern at the lack of a robust statement, in the temporary rule, on the need for co-ordination of shore leave for ships' crews. We note that this section only *encourages* the co-ordination of shore leave and procedures for access through port facilities. Since the port facility security plan will also be approved by the USCG, we request that this section should 'require' the co-ordination of shore leave. This implies that a plan that fails to address this could not be approved.

15. ICS supports the development of standardised credentials for persons requiring access to ships. However the USCG is urged to ensure that authorised officials, and others, requiring access have verifiable photo-identification documentation, at least equivalent to that required of ship's crew. Those requiring access to a ship have a duty to co-operate with the ship's crew in ensuring the security of international maritime transport.

Discussion of Comments to Maritime Security Public Meetings (pg 39253)

16. ICS fully endorses the provision (pg 39253) whereby company-certified training qualifications will be acceptable until other training provisions are complete. This addresses a particular concern of the international shipping community and its recognition by the USCG is appreciated.

Table 5. Relation between HSAS, MARSEC Levels and SOLAS related Security Levels (pg 39268)

17. In a previous submission, ICS commented upon the relationship between the various security level systems. Table 5 shows that the relationship at MARSEC level 1 has now been clarified and ICS fully supports the new tabulation.

101.300 and 101.405, Preparedness communications and Maritime Security Directives

18. ICS has concerns regarding the timely and effective distribution of security related information to ships in port and those approaching the port that have a need to know. This particularly relates to the MARSEC level in force but

conceivably to other information that may be necessary from time to time. The temporary rule appears to leave the detail of this to the local area plan, whilst also recommending the use of local broadcast and Maritime Security Directives (MSD). The local broadcast addresses the obvious need for timeliness but does not guarantee receipt, whilst the MSD appear to require some pre-advice of its publication. In our view, these mechanisms do not provide the speed of response or the guarantee of receipt which is surely essential. We recommend that a centrally controlled database and email/satcom facilities provide a more reliable system with a speed of response appropriate to the need.

Comments specific to Vessel Security (USCG-2003-14749)

Preamble, Cost assessment

19. ICS recognises that estimating the cost of the proposed measures on foreign flagged ships is extremely difficult but considers that the costs quoted are significantly understated. OECD has recently reported on the cost of the ISPS measures for international shipping and we believe this estimate is also understated but it represents a significantly larger figure than that quoted in this section. It should be recognised that it is only through the maintenance of the appropriate level of security onboard the ship throughout its international voyage that security in US ports is underpinned. The costs therefore are not confined to the time spent in US waters.

104.240, Maritime Security (MARSEC) Level co-ordination and implementation

20. MARSEC level 3 provisions mentioned in this section appear to make significant demands upon ships where in practice the authority of the ship has no jurisdiction. This includes waterborne security patrols, armed security personnel and screening the ship for dangerous substances and underwater devices. Our concern here is with the authority to undertake the task and also the competence of those undertaking the task. Waterborne patrols provided by the ship would have no authority for action under Federal or State law. Armed patrols are an extremely worrying concept where there is no Federal rule on who may be armed, the level of training and the rules of engagement. This has already given rise to problems on certain types of ships (oil and chemical tankers) where the Immigration and Naturalisation Service (INS) has required armed guards to be employed. Such personnel have often been found to be untrained in the specific safety precautions associated with these ships or even with the dangers involved. Also related to this matter is the authority of the guard to use lethal force and where the liability would fall in the event of the use of force. Merchant service personnel are not trained in the practice of underwater hull searches or even in the assessment of suitability should contractors be considered for this task. None of these tasks should be devolved to 'civilian' personnel without the necessary basic and continuation training or the experience of routine law enforcement on a daily basis. We would contend that the Federal Government should be responsible for the conduct of each of these specific activities in its

routine law enforcement role. Whilst this should certainly be the case at MARSEC level 3, where a threat has been identified, arguably it also pertains at MARSEC level 2 when an increased awareness of threat is required.

Comments specific to Facility Security (USCG-2003-14732)

105.200, Owner or Operator (responsibilities)

21. We refer to our comments at paragraph 14, above. We strongly recommend that the provision of co-ordination and facilitation for shore leave should be a pre-requisite before the approval of a facility security plan.

J C S Horrocks
Secretary General